Legal Updates

April 2022

Summary of Major Legal Updates

Key Highlights:

- Whether fixation of time limit is at all appropriate in E-Way bill when the transaction is genuine?
- The ground of lack of jurisdiction can not be raised after passing assessment order, if the same is not raised at the initial stage of proceedings.
- Depriving a benefit due to technical glitches of portal is illegal, arbitrary and unjust
- Management and Technical services provided to parent company can not be termed as intermediary services.
- Intimation of tax can only be given in the form GST DRC – 1A and not in GST DRC – 1
- Recovery Proceedings can not be initiated without issuance of a proper Show Cause Notice

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1. Vehicle cannot be detained on the sole ground of expiry of E-way bill

*[**Podder And Podder Industries Pvt Ltd Vs the State Of Tripura & Ors.** (2022-TIOL-534-HC-TRIPURA-GST)]*

Facts - The petitioner has supplied certain goods through truck, due to some technical problems, by the time the vehicle reached the destination, the E-Way bill had expired. Therefore, the vehicle was detained and afterwards the direction of seizure of both vehicles as well as goods has been given.

Findings - The Hon'ble High Court has held that free flow of genuine/bonafide movement of goods should be encouraged as it is meant to be for the purpose of of development of the nation.

When there is no doubt that transaction between two registered persons is accompanied with all the necessary documents, vehicle should not be detained even if the e-way bill has expired just prior to the date of entry into the State.

"Passing Observations" – The court has also observed in its judgment that to enhance ease of doing business it is necessary for rulemaking authorities to reconsider in their wisdom whether fixation of time limits given for expiry of e-way bill is required for all circumstances?

H&A Comments: The Hon'ble High Court has exercised its discretionary power to condone the expired E-Way bill. Notably, the Hon'ble High Court has also made passing observations to deal with *bonafide* cases. Several judicial pronouncements in past have emphasized on similar issue stating that consideration of the expiry of E-Way bill as intention to evade tax is arbitrary in nature. But still taxpayers are not getting any relief unless writ remedy is exercised.

2. The ground of lack of jurisdiction cannot be raised after passing assessment order, if the same is not raised at the initial stage of proceedings.

*[**Ajay Verma vs. Union of India** (2022-TIOL-477-HC-ALL-GST)]*

Facts – The petitioner was assigned to Officer of Central Tax but the show cause notice for assessment under Section 73 was issued by the Officer of State Tax.

The petitioner submitted a reply to the show cause notice but did not raise any objection as to the jurisdiction on the ground of assignment of the case to Central Officer.

The State tax officer passed the assessment order creating certain demand. Therefore, the petitioner has filed the current writ petition to quash the show cause notice stating that impugned show cause notice and order issued by State tax officer is without jurisdiction.

Findings - The Hon'ble High Court has held that petitioner did not inform the State tax officer neither at the time of issuance of show cause notice nor during the course of assessment proceedings, that his case is assigned to Central tax officer. Only after the assessment order is passed, the said was informed.

The combined reading of Section 2(91) and Section 6 of CGST Act read with minutes of GST Council meetings makes it very clear that proper officer both under SGST Act and CGST Act have jurisdiction over assessees falling within their territorial jurisdiction but for administrative convenience, assignment of taxpayers have been made by the designated committee at the State level.

Present case is not a case of inherent lack of jurisdiction, rather it is a case of error of jurisdiction on account of non-allotment of case of petitioner to state tax officer.

If the petitioner had objected the same at the initial stage or during the course of assessment, the position could have been rectified by the state officer by informing the central officer.

H&A Comments: Though the adjudication proceedings issued is contrary to direction issued by the circular, but it cannot be quashed where it is not objected by the taxpayer at the beginning. It is suggested to taxpayers to be informed and vigilant in paying attention to jurisdictional lapses at the initial stage itself. Any such objection made at a later state i.e. after completion of entire proceedings and passing of orders, will not be entertained by the Courts. Similar view was taken by the Hon'ble Supreme Court in the case of **Nusli Neville Wadia Vs. Ivory Properties and others** [(2020) 6 SCC 557]

3. Depriving a benefit due to technical glitches of portal is illegal, arbitrary and unjust

*[**Pacific Industries Ltd Vs Union of India** (2022-TIOL-400-HC-RAJ-GST)]*

Facts – The petitioner is a registered dealer under the GST regime and has taken another registration in the same state. In order to transfer the input tax credit to the newly registered unit, ITC 2A had to be uploaded on the GSTN Portal through which unutilized ITC can be

permitted to be transferred. The facility to obtain multiple registration having similar vertical is newly introduced through amendments made in February 2019.

Form ITC 2A has to be submitted on GSTN Portal within one month of obtaining the GST Registration. But in case of petitioner, Form GST ITC-02A was not available on the GSTN Portal for the entire period of 30 days from the registration. As a consequence, he was denied the benefit of transfer of ITC to its new registration.

Petitioner has filed manual ITC-02A and submitted the same to Deputy Commissioner but the same was not accepted. Therefore, petitioner filed the writ petition to use the unutilized ITC and to fulfil its tax liability.

Findings - The Hon'ble High Court has observed that department failed to acknowledge and transfer the ITC accruing to the petitioner pursuant to the registration of its new business unit in accordance with GST Rules. The action of the department was grossly **illegal, arbitrary and unjust.**

And also directed the respondents to regularise the input tax credit in favour of the petitioner as per entitlement. The petitioner has been allowed to avail the ITC through the next GSTR-3B return.

H&A Comments: This decision by the HC, it provides a great relief to all the taxpayers. However, practically the adjudicating authorities are reluctant to grant the relief. It should also be noted that such glitches are something, which are within the control of the G.S.T.N. and a registered dealer should not be denied benefit which is available to him despite adhering to the provisions of the law. Courts have repeatedly held that a person should not be deprived of any benefit which is available to him due to the mistakes of GSTN Portal. Similar view was taken in **M/s Wardwizard Innovations and Mobility Ltd Vs Commissioner, SGST** (2022-TIOL-244-HC-AHM-GST)

4. Management and Technical services provided to parent company cannot be termed as intermediary services.

[M/s Excelpoint Systems Pvt Ltd Vs. Commissioner of ST, (2022-TIOL-303-CESTAT-BANG)]

Facts – Appellant entered into a Management & Technical Service Agreement with its parent company located in Singapore. The consideration payable to appellant would be the total monthly expenses incurred by appellant with a markup of 10% in foreign currency.

The Appellant filed refund claims seeking the refund of unutilized CENVAT credit paid on input services used for providing output services exported during impugned period.

The Adjudicating Authority rejected the refund claims stating that the Appellant is providing intermediary services & services are provided in India as per Place of Provision Rules, 2012 and there is no export of services under Rule 6A of Service Tax Rules, 1994

Appellant filed an appeal before the Commissioner (Appeals) which got rejected. Therefore, Appellant has filed the present appeal before the Hon'ble CESTAT asking whether the authorities below are justified in treating the appellant as an "intermediary" and consequently justified in rejecting the refund claim of the appellant?

Findings – The Hon'ble CESTAT has held that "intermediary" means any person who arranges a provision of service between two or more persons and in the present case there are only two parties involved and no third person is figuring in. And there has been an agreement between those two parties which is binding on them respectively.

Department has also not alleged that appellant was involved in any way, either in purchase or sale of goods or even in the collection of sale proceeds from the customers of the company. Therefore, it can be concluded that the appellant is not acting as an agent or a middleman for anyone, and hence, is not covered by the definition of 'intermediary'. Therefore, benefit of exports should be allowed.

H&A Comments: The ruling pronounced by the Hon'ble CESTAT is very useful in the era of GST also whereby, department is trying to conclude all Management & Technical services which are provided by an Indian company to its Parent company situated outside India as intermediary. Also, it is very clear that in order to conclude any services as intermediary services, there should be two or more persons besides the service provider and the intermediary will be the person facilitating between the two persons involved. Similar decision is rendered by the Hon'ble Chandigarh bench of CESTAT in the case of **Macquarie Global Services Pvt. Ltd** – (2021-TIOL-790-CESTAT-CHD)

The concept of intermediary was borrowed in GST from the Service Tax Regime. Therefore, concept of intermediary under GST law and Service Tax law is similar.

Under GST regime, department has clarified the concept of Intermediary Services vide Circular no. 159/15/2021-GST dated 20th Sept 2021, whereby, it is stated that intermediary services requires some basic pre-requisites such as – Intermediary arrangement should have minimum of three parties, two distinct supply should be there, Intermediary service provider to have the character of an agent, broker or any other similar person, intermediary does not include a person who supplies goods or services or both on his own account and Sub-contracting cannot be construed as intermediary.

Caveat – Circulars are only instructions/clarification issued by the revenue authorities to their sub-ordinates. It does not have binding authority over assessee, however the officers are bound to follow the same.

5. Intimation of tax can only be given in the form GST DRC – 1A and not in GST DRC – 1

*[**Agrometal Vendibles Pvt. Ltd. v. State of Gujarat** (2022-TIOL-517-HC-AHM-GST)]*

Facts – Petitioner received an intimation of tax ascertained as being payable under Section 74(1) and (5) of CGST Act in the form DRC 01. The petitioner has also been informed in the said intimation that if he fails to make payment in DRC-03 then the amount of tax will be recovered along with interest and penalty.

The principal argument of the petitioner is that although the notice is in the form of intimation, yet it is as good as a demand order hence the petitioner has challenged the validity of the notice.

Findings – The Hon'ble High Court has held that at the stage of intimation Form GST DRC 01A is applicable which is u/s 74(5) read with Rule 142(1A) of the Rules 2017. Whereas in the present case, intimation is issued in issued in Form GST DRC-01. The Form GST DRC-01 is in the form of Show Cause notice which is issued u/s 74(1).

While issuing intimation, the proper officer can not threaten the taxpayer stating that if he would fail to comply with the intimation, the department shall proceed to recover the entire amount with penalty and interest.

The primary intention to give intimation is that the proper officer should inform the dealer that if he fails to make the payment, the next step in the process will be issue of a show cause notice under Section 74(1) in accordance with the Form GST DRC - 01.

And therefore, the intimation in the form of Form GST DRC 01 is quashed and set aside.

H&A Comments: This judgement given by the Hon'ble Gujarat High Court has highlighted the blunder committed by the department and stated that intimation under DRC 01A should not threaten the taxpayer. The said judgement has also emphasized on the fact that department needs to correct themselves with regard to their understanding of the procedure to be followed for adjudication. The process of adjudication must be streamlined as well as the same must be adhered strictly by the department otherwise, taxpayers will have to repeatedly knock the doors of Courts for seeking reliefs despite having availability of alternative remedy of appeal. Therefore, it is important for department to act fairly and must act with an open mind while initiating SCN proceeding.

6. Recovery Proceedings cannot be initiated without issuance of a proper Show Cause Notice

[M/S Godavari Commodities Ltd Vs State Of Jharkhand (2022-TIOL-600-HC-JHARKHAND-GST)]

Facts – The petitioner is engaged in the business of trading of coal. The department carried out an inspection under Section 67 of the Act, 2017 in the registered premises of the petitioner with primary allegation of having availed ITC on goods without its actual movement.

Subsequently, petitioner was asked to produce certain documents and various communications were exchanged between the petitioner and the department to demonstrate its claim towards genuineness of the transactions of purchase and sale of coal made by the petitioner.

However, the Respondent-authorities were not convinced with the documents furnished by the petitioner and, accordingly, issued a '**Pre-Show Cause Notice Consultation'** to the petitioner in Form GST DRC-01A in Jan 2020, directing the petitioner to make payment of the amount of tax as stated in the notice along with applicable interest and penalty.

Subsequently, a **'summary of show cause notice'** was issued to the petitioner in Form GST DRC-01 dated March 2020. Thereafter, straightaway, the petitioner was issued Adjudication order dated Aug 2020, confirming the tax, interest and penalty upon the petitioner. However, the same was never communicated to the Petitioner and only Form DRC-07 i.e. the **Summary Order** dated Sept 2020 was issued.

Being aggrieved, the Petitioner filed appealed against the Adjudication Order.

Findings – The Hon'ble High Court has held that the adjudication order is not proper in the eyes of law as the same is passed without issuance of a proper show cause notice and thus it amounts to violation of principles of natural justice.

The manner in which the impugned Adjudication Orders have been passed clearly point out serious lacuna in the proceedings conducted under the GST Act.

The Court has also directed the Commissioner of State Tax Department to issue appropriate guidelines /circular/notification elaborating the procedure which is to be adopted by the State Tax authorities regarding the manner of issuance of Show Cause Notice, adjudication, and recovery proceedings, so that proper procedure is followed by the State Tax authorities in conduct of the adjudication proceedings.

H&A Comments: The Hon'ble High Court has emphasized on the fact that a summary Show cause notice does not fulfil the ingredients of a proper show cause notice. The said issue is also dealt in by the same Court in the case of **M/s NKAS Services Private Limited Vs. State of Jharkhand and ors** (2021-TIOL-2079-HC-JHARKHAND-GST). The Hon'ble Court has also pointed out that proper opportunity of being heard is fundamentally important without which the adjudication proceedings can not be sustained in law. This view was upheld by various High Courts such as, in case of **M/s. Prime Alloys Vs. The State Tax Officer** (2021-TIOL-2362-HC-MAD-GST) and **Alkem Laboratories Limited Vs. Union of India** (2021-TIOL-328-HC-AHM-GST). Finally, Court has also pointed out that it would be in greater interest of the revenue if Commissioner of State Tax issues guidelines with respect to adjudication process.

7. A vehicle cannot be detained if technical breach in documents is corrected immediately with no intention to evade taxes

[M/s Smart Roofing Pvt. Ltd. Vs. The State Tax officer, (2022-TIOL-444-HC-MAD-GST)]

Facts – The petitioner had consigned the goods from its main place of business at Chennai to its additional place of business but the said additional place of business has not been included in the registration certificate obtained by the petitioner.

The departmental officers have detained the vehicle as the additional place of business was mentioned on the E-Way bill but the same was not included in registration certificate.

The authorities have levied penalty u/s 129(3) of the CGST Act. Hence the petitioner has filed the present writ petition before the High Court.

Findings – The Hon'ble High Court has held that the authorities were justified in detaining the goods as there is wrong declaration in the E-Way bill.

However, the consignor and the consignee are one and the same entity, namely, Head Office and the Branch Office. Therefore, there is no intention to evade the taxes.

The petitioner has taken the steps to ex post facto include the new place of business altering the GST Registration. The registration certificate has also been amended.

Therefore, this is a case of mere technical breach committed by the petitioner and the respondents have been directed to release the vehicle and the consignment and the present writ petition is allowed.

H&A Comments: Any minor breaches have always been considered as procedural non compliances by the courts and relief has been granted to the taxpayers. Courts have repeatedly held that procedural

lapse will not attract any penalty. In order to avoid the hardships, it is suggested to taxpayers to be vigilante while declaring any information on the tax related documents.

8. Credit ledger must be restored if the authorities have accepted the repayment of the erroneous refund

[I-Tech Plast India Pvt Ltd Vs. State of Gujarat, (2022-TIOL-535-HC-AHM-GST)]

Facts – The applicant is engaged in the business of manufacturing various types of toys and it has been issued 'advance license', whereby the applicant is permitted duty free import of its raw material.

Thus, the applicant is importing its raw material by availing the benefit of the Notification No. 79/2017-Customs dated 13.10.17 and then using such raw materials in manufacturing its products and exporting the same.

During the period Financial Year 2017-18 to 2020-2021, the applicant, inadvertently cleared and exported its finished goods upon payment of the IGST instead of exporting it under the 'Letter of Undertaking' (LUT).

The applicant utilized ITC for payment of the IGST on exports which was refunded automatically. Thus, violating the provisions of sub-rule 10 of rule 96 of the CGST Rules.

Upon realizing this mistake, the applicant voluntarily paid the requisite IGST along with the interest to the department for the period via GST DRC – 03 and requested the authorities to restore the ITC credit which was utilized for payment of the IGST on exports.

However, the department denied the refund by reason that once an amount in question is paid in the FORM-DRC-O3 voluntarily, the same cannot be refunded. Being aggrieved, the writ applicant has filed the instant petition.

Findings – The Hon'ble Court has held that the first part of the transaction is nullified inasmuch as the amount erroneously refunded has already been repaid by the writ applicant along with interest.

In the present case, refund as contemplated under sub-rule (10) of rule 96 of the CGST Rules is not an issue and the simple issue is restoration of the ITC, which was erroneously refunded and subsequently recovered.

If the authorities have accepted that there was an error and resultantly, accepted repayment of the erroneous refund, as a corollary, the credit of the ITC must be restored. It cannot be that

for the purpose of repayment, there was an error, and for the purpose of restoration of the ITC, there was no error.

The erroneous refund amount has already been repaid by the applicant along with interest in DRC-03. Once such an amount is repaid, the original debit of the ITC must be recredited/ restored. Otherwise, the same would amount to double taxation, which is not permissible in law.

H&A Comments: The Hon'ble Court has established that if taxpayers have claimed any ineligible benefit inadvertently and such benefit is rectified later then they should be restored to the position in which they should have been if such mistake was not committed.

In the present case, the amount debited from ECL must be re-credited through PMT-03.

Additionally, in such cases, prayer should also be made for applying for refund of unutilized input tax credit on exports made without payment of tax, then the relevant date for the case would get commenced from the date of the judgment. Otherwise, the relevant date shall be the date of export of goods and as on the date of pronouncement of the judgment, taxpayer would not be eligible for refund considering the expiry of time limit (2 years from the relevant date).

Alternatively, the restored input tax credit can also be used for the purpose of discharging monthly GST liability through offsetting the same against outward supply.

9. Minor mistakes made in e-way bill cannot be a valid reason for invocation of section 129.

*[**Greenlights Power Solutions Vs State Tax Officer** (2022-VIL-284-KER)]*

Facts- Petitioner carries on the business in electrical contract works. Some goods were transported through a vehicle after paying the required tax. During the course of transportation, the goods were intercepted by the department, who detained the goods under section 129 of the Act on noticing an irregularity in the e-way bill.

Though the goods were being transported on 02.03.2021 (2nd March 2021) the invoice mentioned the date as 03.02.2021 (3rd February, 2021). There was thus a discrepancy in the date on the invoice. According to the petitioner, the error occurred due to the default computer formatting system. Instead of day-month-year (dd-mm-yyyy), the computer-generated bill provided for a month-day-year (mm-dd-yyyy) format.

Due to the irregularity in the invoice, the goods were detained and tax and penalty was demanded. Petitioner pleaded that since the goods were required urgently, petitioner was compelled to obtain release of the goods by furnishing bank guarantee and according to the petitioner, unless the bank guarantee is released, petitioner would be put to great prejudice.

Findings - The Circular No.64/38/2018 dated 14-09-2018 refers to only six instances of minor discrepancies. The present situation is not covered by the six instances mentioned in the Circular.

However, the analysis of the six instances reveals those discrepancies which have no bearing on tax liability and are caused on account of bonafide mistakes like typographical errors, or otherwise are regarded as minor discrepancies.

The error noticed is insignificant and not of any consequence for invoking the power conferred under section 129 of the Act to impose tax and penalty

In view of the above, the imposition of tax and penalty upon the petitioner is perverse and illegal, warranting interference under Article 226 of the Constitution of India.

H&A Comments: The purpose of CBIC Circular No.64/38/2018 dated 14-09- 2018 was to mitigate the hardships being caused to taxpayers for minor discrepancies, which had no bearing on the liability to tax or on the nature of goods being transported. Though circular is not law, it is binding on the revenue authorities and they have to strictly follow the same. Minor discrepancies cannot be penalized contrary to the mode and procedure contemplated under the Circular. Though the present situation is not covered by the six instances mentioned in the CBIC Circular No.64/38/2018, however, the analysis of the six instances reveals those discrepancies which have no bearing on tax liability and are caused on account of bonafide mistakes like typographical errors, or otherwise are regarded as minor discrepancies. The High Court has substantiated the interpretation that the instances given in the subject circular are just indicative and not exhaustive.

10. Refund of Service Tax paid under RCM during post-GST regime cannot be denied

[Circor Flow Technologies India Pvt. Ltd. Vs Pr. Commissioner of GST & C. Ex., Coimbatore -2022 (59) G.S.T.L. 63 (Tri. - Chennai)]

Facts- Appellant was registered under both Central Excise and Service Tax during pre-GST regime. Appellant availed certain services during pre-GST regime, on which Service tax was discharged post-GST regime. During the Service tax, the appellant was eligible to avail the credit of service tax paid by them. But after implementation of GST, as appellant could not

avail Cenvat credit, they filed an application for refund of the amount of which they are eligible for credit.

The refund claim was rejected by the adjudicating authority stating that the tax has been voluntarily paid and that no credit is eligible in the GST regime. On appeal filed before the Commissioner (Appeals), the said view was upheld. Hence the appellants are now before the Tribunal.

Findings – The Hon'ble CESTAT held that as per Section 174(2) of CGST Act, any right, privilege, obligation, or liability acquired, accrued or incurred under the repealed Acts i.e. in this case Finance Act, 1994 (Service Tax), were not affected.

Thus, any liability to pay Service Tax under the erstwhile law would continue even after the introduction of GST. Similarly, the right accrued under the said Act in the nature of credit of Service Tax so paid is also protected and cannot be denied.

Section 142(3) of CGST Act provides that claims of refund of service tax have to be disposed in accordance with the provisions of existing law and any amount eventually accruing has to be paid in cash.

H&A Comments: In the present case, the eligibility of the Appellant to claim the Cenvat credit under normal circumstances under erstwhile regime is not disputed. However, department is contending that credit of such tax paid is not eligible under GST regime. When the credit of Service tax paid is not allowed under GST as Input tax then taxpayer does not have any other way other than to claim refund of taxes paid. The credit was accrued only after the payment of Service Tax i.e. post GST regime.

Just because the transitional provision has come into effect from 01.07.2017 and under Section 140(1) of the Act, the a person can make a claim only in respect of the credit which is already accrued as on 30.06.2017 and credit which come into the account of the taxpayers only subsequently, for which, claim under Section 140(1) could not have been made, the chance of making an application to seek the refund or otherwise of such a credit which has subsequently accrued in the account of the petitioners, cannot be denied.

If Section 142(3) is not permitted to be invoked in meeting situations like this, that situation would render that taxpayer remediless, hence, the "Doctrine of Necessity" can be invoked. This is because in these kinds of special situations, for which, other than Section 142(3), no other eligible provision is available.

11. Opportunity of being heard should mandatorily be granted before passing the order, even if same is not sought by the Noticee.

*[**Bharat Mint & Allied Chemicals** -2022 (59) GSTL 394 (All.)]*

Facts- Petitioner submits that assessment order was passed without giving an opportunity of being heard as given in Section 75(4) of CGST Act. Thus, impugned order is in violation of principles of natural justice.

Department has taken a stand that no opportunity of being heard is required before passing the assessment order and have relied on the decision rendered by Hon'ble Supreme Court in case of **Union of India and Others Vs. M/s. Jesus Sales Corporation** – (2002-TIOL-259-SC-CUS).

Department has further stated that petitioner has an alternative remedy of appeal under Section 107 of the Act.

Findings – The Hon'ble High Court held that from perusal of Section 75(4) it is evident that opportunity of hearing has to be granted by authorities. Taxpayer even need not request for opportunity of being heard and it is mandatory for the authority concerned to afford opportunity of personal hearing before passing an order adverse to such person.

Hon'ble Court has further held that the in the case of M/s. Jesus Sales Corporation (supra), the observation made by the Apex Court was made while interpretating specific provision of Imports and Exports (Control) Act 1947 where there was no statutory provision of personal hearing. But the provisions of Section 75(4) specifically mandate for opportunity of hearing before passing the order.

The Court also held that availability of alternative remedy is not a complete bar to entertain a writ petition under Section 226 of the Constitution of India. In exceptional circumstances writ can be entertained even if there is an alternative remedy. In this case, principles of natural justice were violated inasmuch as no hearing opportunity was granted to the petitioner.

H&A Comments: Article 226 of the Constitution of India confers very vide powers on High Courts to issue writs but this power is discretionary and the High Court may refuse to exercise the discretion if it is satisfied that the aggrieved person has adequate or suitable remedy elsewhere. It is a rule of discretion and not rule of compulsion or the rule of law. Even though there may be an alternative remedy, yet the High Court may entertain a writ petition depending upon facts of each case. It is neither possible nor desirable to lay down inflexible rule to be applied rigidly for entertaining a writ petition. Some exceptions to the rule of alternative remedy as settled by the courts are as under: lack of jurisdiction, ultravires provisions, violation of principles of natural justice, enforcement of fundamental right is to be sought, tax is levied without authority of law etc.

In the given case, the Hon'ble Court has exercised their discretionary powers and entertained the writ even when the alternate remedy was available. Whenever an order is without giving an adequate opportunity of being heard, writ can be exercised so that order can be quashed and the matter can be remanded back to the adjudicating authorities.

12. Can the Show cause notice travel beyond the reasons delineated in Section 74?

*[**Ganesh Ores Pvt. Ltd. Vs State of Odisha and Others** - 2022 (59) GSTL 258 (Ori.)]*

Facts - After the adjudication proceedings for refund, the refund order was passed in favour of the petitioner and refund was paid. Thereafter, several communications were exchanged between petitioner and department. Subsequently, the petitioner was served with notice under Section 74(1) of the Act issued by the same authority.

Petitioner is contending that against an order of erroneous refund it was open to department to file an appeal against Section 107 of the Act. But as department missed the time limit to file the appeal, refund adjudication proceedings cannot be reopened by resorting to Section 74.

Findings – The Hon'ble High Court held that there is no limitation placed by the legislature on the powers exercisable under Section 74(1) of the Act. There is no indication that an order that is otherwise appealable under Section 107 of the OGST Act cannot be sought to be revisited under Section 74(1) of the GST Act.

Section 74(1) of the GST Act does not make any distinction between those refund orders that have been passed without an adjudication and those have been passed after an adjudication. Also, there is nothing in Section 74 (1) of the GST Act to indicate that an order of refund granted after an adjudication cannot be sought to be reopened thereunder.

Therefore, plea of petitioner cannot be accepted that the impugned notice is without jurisdiction. However, petitioner can raise all the contentions in reply to SCN.

H&A Comments: The Hon'ble Court has explained the power vested under Section 74 of GST Act. But at the same time, it is important to note that if refund adjudication proceeding is completed and the revenue authorities find that the order passed is erroneous then the same has to be challenged via appeal/ revision.

Once the refund proceedings are in favour of the taxpayer, refund is granted as a consequential relief in terms of adjudicating authority's order and if the said order is not put to challenge by revenue authorities before Commissioner (Appeals) then such order attains the finality. Therefore, as the order of adjudicating authority was not challenged within the permitted time, then the very same issue can not be restarted by issuing fresh show cause notice.

Another facet of the given case is that the authority who is responsible for adjudicating a matter, does not have power to review its own order unless there are changes in facts of the case. If GST law has not conferred this power of review on authority, such authority cannot assume such power.

Appellant has filed SLP against the order of the Hight Court. Hon'ble Supreme Court, in this case has held that they will not interfere in this SLP and dismissed the same. However, the Apex Court has asked the petitioner to urge before the concerned authority that the Show cause notice travels beyond reasons delineated in Section 74 of GST Act.

13. Writ Proceedings are not justified when the adjudication is underway

*[**HEC India LLP Vs Commissioner of GST & C.E. Audit – II, Commissionerate Chennai**- 2022 (59) GSTL 267 (Mad.)]*

Facts – Petitioner is a registered taxpayer under GST. Department issued a show cause notice on various grounds such as, the petitioner has availed ITC for import purchase based on a Bill of Landing, which did not mention the petitioner's GSTIN number and the ITC availed by the petitioner in GSTR 3B is more than amounts reflected in GSTR 2A.

Consequently, department blocked the petitioner's ITC. Petitioner is of the view that blocking of ITC is erroneous in their case and requested department to withdraw the same. But there was no response from the department, hence this petition is filed.

Findings– The Hon'ble High Court has held that the issue raised is in the process of adjudication before the competent authority. The Court has further held that intervention by the Court in this type of cases is not desirable, as it would cause prejudice to the interest of the either of the parties.

All the aspects of the case require adjudication based on documents and evidence to be produced by the respective parties. Thus, the petitioner is at liberty to redress their grievances before the competent authorities and this Court cannot issue any such direction as such prayed for, as the proceedings are in progress. The authorities are directed to conclude the proceedings as expeditiously as possible.

H&A Comments: One of the major takeaways from this judgment is that petitioner has rushed for writ remedy at a very early stage of the adjudication. In this case, the prayers of the petition involved evaluation of unadjudicated facts, hence, such matter should be placed before the competent authority and the appellate authority thereafter. The High Courts cannot conduct the process of adjudication of such disputed facts. As rightly held in the above case, such adjudication, is always dangerous and there is possibility of commission, omission and error and allowing some persons to escape from the

clutches of law. Thus, it is always preferable that the adjudication on merits which are conducted by the authorities competent and thereafter, by the appellate authority, who is the final fact finding authority, will be of greater assistance for the High Court for the purpose of exercise of powers of judicial review under Article 226 of the Constitution of India.

The Courts have the power of judicial review to scrutinise the processes through which the jurisdiction is taken by the competent authorities in relation with the law, but not the decision itself. Thus, the Courts always exercise restraint in entertaining a writ petition filed against the show cause notices.

Similarly, High Courts have discretionary powers to issue writs and High Court may refuse to exercise the discretion if it is satisfied that the aggrieved person has adequate or suitable remedy elsewhere. The remedy of filing reply to show cause was equally efficacious open to the petitioner.

The fact that the aggrieved party has another, and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies. In this regard there are many decisions by the Courts such as **Himmatlal Harilal Mehta v. State of Madhya Pradesh** (AIR 1954 SC 403), **Collector of Customs v. Ramchand Sobhraj Wadhwani** (AIR 1961 SC 1506) etc.

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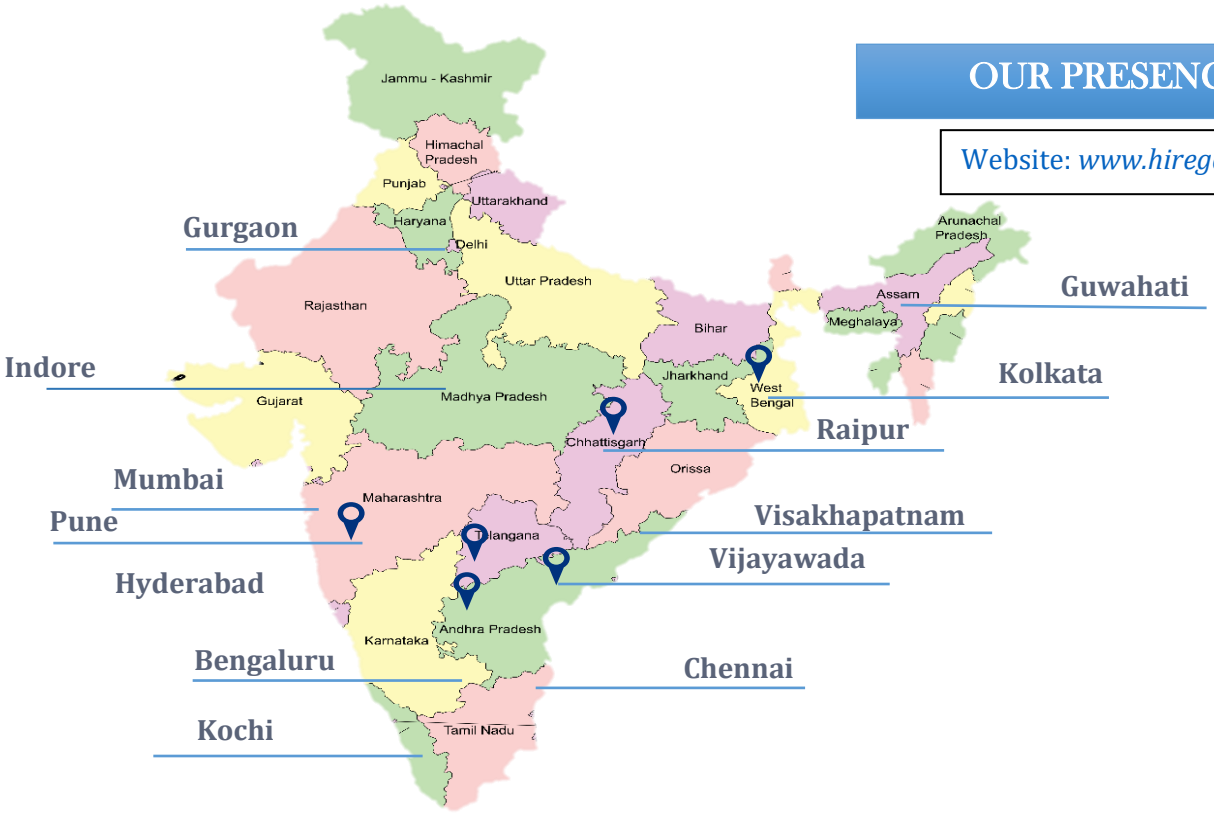

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